

Remarks

Claims 1-28 are pending in the application. Claims 1-28 have been rejected. No new matter has been added by this Response. It is respectfully submitted that the pending claims define allowable subject matter.

Claims 1-28 have been rejected under 35 U.S.C. §102(e) as being anticipated by Ito et al. (U.S. Patent 6,445,409). Applicant respectfully traverses this rejection.

Applicant previously submitted in a Response dated March 10, 2004 a declaration of the inventor Ray M. Broemmelsiek under 37 C.F.R. §1.131 establishing a date of invention in this country prior to the filing date of the Ito et al. reference. Applicant then submitted a Response dated August 30, 2004 further supporting the prior invention date.

In order to establish prior invention under 37 C.F.R. §1.131 there must be a showing of facts to establish either a reduction to practice prior to the effective date of the reference or conception of the invention prior to the effective date of the invention coupled with due diligence from prior to that date to a subsequent reduction to practice or to the filing of the application. The law is clear that a reduction to practice is not needed, but conception followed by due diligence in reducing the invention to practice up until the filing of the application may be used to establish prior invention (see, e.g., MPEP 715.07). Accordingly, contrary to the Office Action, the Statement of Work does not have to show a reduction to practice.

Further, Applicant submits that the Declaration of Ray M. Broemmelsiek and the supporting documents clearly show due diligence that is needed to support the establishment of prior invention. Priority of invention may be established by any satisfactory factual evidence (MPEP 715.07). In the present case, conception and due diligence to filing of the application is evidenced by the contracts and agreements attached to and supporting the Declaration of Ray M.

Broemmelsiek. These contracts clearly show the necessary activity for reasonable due diligence from conception to support prior invention.

Additionally, it is not the purview of the Office to determine whether others were involved in the conception. The evidence submitted must be taken at face value unless the Office is able to provide evidence to the contrary. In the present case, the inventor drafted the documents provided in support of his Declaration and has represented himself as the sole invention of the claimed subject matter. The documents submitted make no statement to the contrary and, thus, it is not proper for the Office to argue otherwise unless proper support or evidence is provided. The Office Action is even incorrect in construing the supporting documents. For example, in the Contract Engineering Agreement submitted in connection with the Declaration, the inventor, Ray M. Broemmelsiek, signed not on behalf of Sensormatic, but on behalf of Spin Logic. Mr. Broemmelsiek did not even work for Sensormatic when he authored the documents. The inventor's business and the technology were subsequently acquired by Sensormatic. Thus, even assuming the Office could make the argument that "the customer conceived of the idea" and the subcontractor helped in reducing it to practice, the Office incorrectly determined the parties to the contract, and in fact, has the parties backwards.

Finally, when reviewing a 37 C.F.R. §1.131 affidavit or declaration, the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and "notes." An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself (MPEP 715.07 and supporting cases). Applicant submits that when all of the evidence submitted is considered in its entirety, all of the elements claimed are described. Documents submitted in support of the Declaration contain all of the claimed elements. For example, the Tracker Development Task Estimates document clearly describes a first set of elements that include video tracking filter parameters and a second set of elements including identified targets and their tracks (Tracker Development Task Estimates, page 2). The qualifying parameters for filtering include, for example, the size and velocity of the object (Tracker Development Task

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Estimates, page 5), which are also described in the specification (specification, page 6, lines 12-25). The other documents also support these claimed elements contrary to the assertion by the Office.

Thus, it is respectfully submitted that the Declaration of Ray M. Broemmelsiek and the supporting documents clearly support a conception and due diligence prior to the filing date of the Ito et al. reference. It is further respectfully submitted that the Declaration meets the requirements of 37 C.F.R. §1.131. Accordingly, Applicant respectfully requests that the rejection of claims 1-28 under 35 U.S.C. §102(e) be withdrawn.

In view of the foregoing remarks, it is respectfully submitted that the prior art fails to teach or suggest the claimed invention and all of the pending claims in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Respectfully Submitted,



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